

ENDORSED  
FILED  
SAN FRANCISCO COUNTY  
SUPERIOR COURT

2007 MAR 27 AM 10:01  
GORDON PARK - LI. CLERK

BY Deborah Steppe  
DEPUTY CLERK

CASE MANAGEMENT CONFERENCE SET

AUG 24 2007 - 9<sup>00</sup> AM

DEPARTMENT 212

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Attorneys for Plaintiff,  
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO  
(Unlimited Jurisdiction)

MATEEL ENVIRONMENTAL  
JUSTICE FOUNDATION,

CASE NO.

**CGC-07-461728**

Plaintiff,

v.

COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES

HOME DEPOT U.S.A., INC.,

Defendant.

TOXIC TORT/ENVIRONMENTAL

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

INTRODUCTION

1. This Complaint seeks civil penalties and an injunction to remedy the continuing failure of defendant HOME DEPOT U.S.A., INC. (hereinafter "Defendant"), to give clear and reasonable warnings to those residents of California, who handle and use Leaded Crystal drinking vessels (hereinafter "Leaded Crystal"), that drinking beverages from these products causes those residents to be exposed to lead and lead compounds, lead acetate, lead phosphate, and lead subacetate (hereinafter, collectively, "lead"). The types of Leaded Crystal to which this Complaint pertains are those types listed in the Product List appended to the Proposition 65 60-

1 Day Notice Letter that is attached to and incorporated by reference into this Complaint. Lead is  
2 known to the State of California to cause cancer, birth defects and male and female reproductive  
3 toxicity. Defendant distributes, and/or markets Leaded Crystal. These products cause exposures  
4 to lead and lead compounds, which are chemicals known to the State of California to cause  
5 cancer, birth defects and other reproductive harm.

6 2. Defendant markets, and/or distributes Leaded Crystal. Defendant intends that  
7 residents of California drink from and use Leaded Crystal that Defendant markets, and/or  
8 distributes. When these products are drunk from and used in their normally intended manner,  
9 they expose people to lead. In spite of knowing that residents of California were and are being  
10 exposed to these chemicals when they drink from and use Leaded Crystal, Defendant did not and  
11 does not provide clear and reasonable warnings that these products cause exposure to chemicals  
12 known to cause cancer, birth defects and other reproductive harm.

13 3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7  
14 to compel Defendant to bring its business practices into compliance with section 25249.5 et seq.  
15 by providing a clear and reasonable warning to each individual who has been and who in the  
16 future may be exposed to the above mentioned toxic chemicals from the use of Defendant's  
17 products. Plaintiff seeks an order that defendant identify and locate each individual person who  
18 in the past has purchased Leaded Crystal and to provide to each such purchaser a clear and  
19 reasonable warning that the Leaded Crystal will cause exposures to chemicals known to cause  
20 birth defects.

21 4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure  
22 of Defendants to provide clear and reasonable warnings regarding exposure to chemicals known  
23 to cause cancer, birth defects and other reproductive harm.

#### 24 PARTIES

25 5. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel")  
26 is a non-profit organization dedicated to, among other causes, the protection of the environment,  
27 promotion of human health, environmental education, and consumer rights. Mateel is based in  
28 Eureka, California, and is incorporated under the laws of the State of California. Mateel is a

1 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement  
2 action in the public interest pursuant to Health & Safety Code §25249.7(d). Residents of  
3 California are regularly exposed to lead and lead compounds from Leaded Crystal distributed or  
4 marketed by Defendants and are so exposed without a clear and reasonable Proposition 65  
5 warning.

6 6. Defendant is a person doing business within the meaning of Health & Safety Code  
7 Section 25249.11. Defendant is a businesses that distributes, and/or markets Leaded Crystal in  
8 California, including the City and County of San Francisco. Distribution and/or marketing of  
9 these products in the City and County of San Francisco and/or to people who live in San  
10 Francisco, causes people to be exposed to lead and lead compounds while they are physically  
11 present in the City and County of San Francisco.

12 7. Plaintiff brings this enforcement action against Defendant pursuant to Health &  
13 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a  
14 60-day Notice letter, dated December 11, 2006, which Mateel sent to California's Attorney  
15 General. Substantively identical letters were sent to every District Attorney in the state, and to the  
16 City Attorneys of every California city with a population greater than 750,000, and to defendant.  
17 Attached to the 60-Day Notice Letter sent to defendant was a summary of Proposition 65 that  
18 was prepared by California's Office of Environmental Health Hazard Assessment. In addition,  
19 each 60-Day Notice Letter plaintiff sent was accompanied by a Certificate of Service attesting to  
20 the service of the 60-Day Notice Letter on each entity which received it. Pursuant to California  
21 Health & Safety Code Section 25249.7(d), a Certificate of Merit attesting to the reasonable and  
22 meritorious basis for the action was also sent with each 60-Day Notice Letter. Factual  
23 information sufficient to establish the basis of the Certificate of Merit was enclosed with the 60-  
24 Day Notice letter Mateel sent to the Attorney General.

25 8. Defendant employs more than ten people.

26 JURISDICTION

27 9. The Court has jurisdiction over this action pursuant to California Health & Safety  
28 Code Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court

1 "original jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6  
2 of the Health & Safety Code, which contains the statutes under which this action is brought, does  
3 not grant jurisdiction to any other trial court.

4 10. This Court also has jurisdiction over Defendant because it is a business that has  
5 sufficient minimum contacts in California and within the City and County of San Francisco.  
6 Defendant intentionally availed itself of the California and San Francisco County markets for  
7 Leaded Crystal. It is thus consistent with traditional notions of fair play and substantial justice  
8 for the San Francisco Superior Court to exercise jurisdiction over Defendant.

9 11. Venue is proper in this Court because Defendant markets Leaded Crystal in and  
10 around San Francisco and thus causes people to be exposed to lead and lead compounds while  
11 those people are physically present in San Francisco. Liability for Plaintiff's causes of action, or  
12 some parts thereof, has accordingly arisen in San Francisco during the times relevant to this  
13 Complaint and Plaintiff seeks civil penalties and imposed by statute.

14 FIRST CAUSE OF ACTION  
15 (Claim for Injunctive Relief)

16 12. Plaintiff realleges and incorporates by reference into this First Cause of Action, as  
17 if specifically set forth herein, paragraphs 1 through 11, inclusive.

18 13. The People of the State of California have declared by referendum under  
19 Proposition 65 (California Health & Safety Code § 25249.5 et seq.) their right "[t]o be informed  
20 about exposures to chemicals that cause cancer, birth defects, and reproductive harm."

21 14. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates  
22 that businesses that knowingly and intentionally expose any individual to a chemical known to  
23 the State of California to cause cancer or birth defects must first provide a clear and reasonable  
24 warning to such individual prior to the exposure.

25 15. Since at least December 11, 2003, Defendant has engaged in conduct that violates  
26 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and  
27 intentionally exposing to the above mentioned toxic chemicals, those California residents who  
28 drink from and use Leaded Crystal. The normally intended use of Leaded Crystal causes

1 exposure to lead and lead compounds, which are chemicals known to the State of California to  
2 cause cancer, birth defects and other reproductive harm. Defendant has not provided clear and  
3 reasonable warnings, within the meaning of Health & Safety Code Sections 25249.6 and  
4 25249.11.

5 16. At all times relevant to this action, Defendant knew that the Leaded Crystal it  
6 distributed or marketed was causing exposures to lead and lead compounds. Defendant intended  
7 that residents of California drink from and use Leaded Crystal in such ways as would lead to  
8 significant exposures to these chemicals.

9 17. By the above described acts, Defendant has violated Cal. Health & Safety Code  
10 § 25249.6 and is therefore subject to an injunction ordering it to stop violating Proposition 65, to  
11 provide warnings to all present and future customers and to provide warnings to its past  
12 customers who purchased defendant's products without receiving a clear and reasonable warning.

13 SECOND CAUSE OF ACTION  
14 (Claim for Civil Penalties)

15 18. Plaintiff realleges and incorporates by reference into this Second Cause of Action,  
16 as if specifically set forth herein, paragraphs 1 through 17, inclusive.

17 19. By the above described acts, Defendant is liable and should be liable pursuant to  
18 Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each individual  
19 exposed without proper warning to lead and lead compounds from the handling or use of  
20 Defendant's Leaded Crystal.

21 PRAYER FOR RELIEF

22 Wherefore, plaintiff prays for judgment against DEFENDANT, as follows:

23 1. Pursuant to the First Cause of Action, that Defendant be enjoined, restrained, and  
24 ordered to comply with the provisions of Section 25249.6 of the California Health & Safety  
25 Code;

26 2. Pursuant to the Second Cause of Action, that Defendant be assessed a civil  
27 penalty in an amount equal to \$2,500.00 per day per individual exposed in violation of Section  
28 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of

1 Defendant's distributing or marketing of Leaded Crystal;

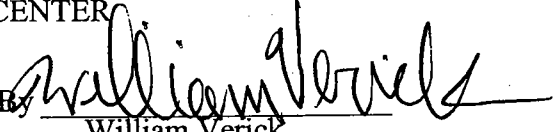
2 3. That Defendant be ordered to identify and locate each individual who purchased  
3 Leaded Crystal and provide a warning to each such person that the Leaded Crystal the person  
4 purchased will expose that person to chemicals known to cause birth defects.

5 4. That, pursuant to Civil Procedure Code § 1021.5, Defendant be ordered to pay to  
6 Plaintiff the attorneys fees and costs it incurred in bringing this enforcement action.

7 5. For such other relief as this court deems just and proper.

8 Dated: March 5, 2007

KLAMATH ENVIRONMENTAL LAW  
CENTER

10   
11 By William Verick  
12 Attorney for Plaintiff  
13 Mateel Environmental Justice Foundation  
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# Klamath

December 11, 2006

EDWARD G. WEIL  
DEPUTY ATTORNEY GENERAL  
OFFICE OF THE ATTORNEY GENERAL  
P.O. BOX 70550  
OAKLAND CA 94612-0550

Greetings:

This office and the Mateel Environmental Justice Foundation ("Mateel") hereby give you notice that Home Depot U.S.A., Inc., ("Home Depot"), is, has been, will be and threatens to be in violation of Cal. Health & Safety Code §25249.6. This office and Mateel are both private enforcers of Proposition 65, both organizations may be reached at the below-listed address and telephone number, I may be considered a "responsible individual" at both organizations, and I may be contacted at the same address and telephone number. This notice pertains to the Expo Design Centers Home Depot operates throughout California. The above referenced violations occur when Home Depot's Expo Design Centers market leaded crystal vessels such as decanters, tumblers, wine glasses, champagne flutes, and cocktail glasses (as for martinis) (collectively hereinafter "leaded crystal vessels"). Handling of, contact with, drinking from, and cleaning up broken glass from leaded crystal vessels exposes people to lead and lead compounds, lead phosphate, lead acetate, and lead subacetate (hereinafter, collectively, "lead"). Lead leaches from the vessel into the food or beverage stored in, or served from, the vessel. The food or beverage is then consumed and the accompanying lead ingested. These exposures (and resulting violations) occur occupationally, environmentally, and as the result of the sale of consumer products and/or services. In occupational settings, the type of work that is done during which the above-referenced exposures occur is handling the leaded crystal vessels, cleaning up broken glass from them, and drinking from them, such as at wine tastings and office parties. These exposures occur via the dermal absorption, inhalation, ingestion, and subcutaneous routes. These violations have occurred every day since at least December 11, 2003, and will continue every day until reasonable warnings are given to those people exposed or until Home Depot's Expo Design Center stops selling leaded crystal. Environmental exposure violations occur in every county of the State and occur both on and off the property of the aforementioned private businesses.

Cordially,

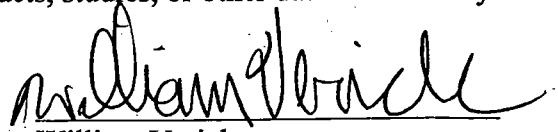


William Verick

### CERTIFICATE OF MERIT

I, William Verick, hereby declare: This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings. I am the attorney for the noticing party. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the person(s) consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: December 11, 2006

  
William Verick

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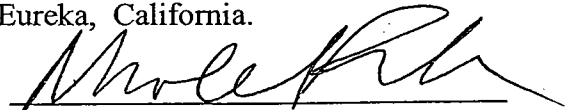
This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliances in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

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### CERTIFICATE OF SERVICE

I, Nicole Frank, declare:

If called, I could and would testify as follows: I am over eighteen. My business address is 424 First Street, Eureka, California, 95501. On December 11, 2006 I caused the attached 60-DAY NOTICE LETTER, or a letter identical in substance, to be served by U.S. Mail on those public enforcement agencies listed on the attached SERVICE LIST; in addition on the same date and by U.S. Mail I caused the attached 60-DAY NOTICE LETTER and PROPOSITION 65: A SUMMARY to be sent by Certified U.S. Mail to the private business entities also listed on the attached SERVICE LIST. I deposited copies of these documents in envelopes, postage pre-paid, with the U.S. Postal Service on the day on which the mail is collected. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 11, 2006 at Eureka, California.

  
Nicole Frank



## SERVICE LIST

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DEPUTY ATTORNEY GENERAL  
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GENERAL  
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CITY HALL ROOM 206  
400 VAN NESS  
SAN FRANCISCO, CA 94102

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MARKLEEVILLE, CA 96120

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708 COURT STREET  
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25 COUNTY CENTER DR.  
OROVILLE, CA 95965

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COUNTY OF CALAVERAS  
GOVERNMENT CENTER  
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COUNTY OF EL DORADO  
515 MAIN ST.  
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SAN RAFAEL, CA 94903

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COUNTY GOVERNMENT CENTER #450  
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VISALIA, CA 93291

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VENTURA, CA 93009

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301 SECOND STREET  
WOODLAND, CA 95695

OFFICE OF THE DISTRICT ATTORNEY  
COUNTY OF YUBA  
215 5TH ST.  
MARYSVILLE, CA 95901

ROBERT L. NARDELLI, CEO  
HOME DEPOT U.S.A., INC.  
2455 PACES FERRY ROAD SE  
ATLANTA, GA 30339-4024